



DEPARTMENT OF JUSTICE

Notice of Proposed Interim Settlement and Crediting Agreement under Comprehensive Environmental Response, Compensation and Liability Act

As of May 25, 2022, the United States Fish and Wildlife Service (“USFWS”), on behalf of the Department of the Interior, the National Oceanic and Atmospheric Administration (“NOAA”), on behalf of the Department of Commerce, (collectively, the “Trustees”), the Department of Justice, and potentially responsible party (“PRP”) BASF Corporation (“BASF”) signed a proposed non-judicial Interim Settlement and Crediting Agreement concerning early natural resource restoration work under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9601 *et seq.*, for a five-acre property in East Newark, New Jersey. The United States contends BASF and other PRPs are liable for natural resource damages under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), concerning the Diamond Alkali Superfund Site, including Newark Bay and the upstream 17 mile stretch of the Passaic River, and the Berry’s Creek Study Area, Bergen County, New Jersey (collectively “the Sites”). The proposed agreement facilitates early natural resource restoration work, and provides for credit for accomplished early restoration work, in advance of the Trustees’ completion of a damage assessment or the filing of legal actions against parties liable under CERCLA at the Sites.

The agreement provides for the completion of natural resource restoration work as described below, in return for a \$73.5 million credit to offset liability for natural resource damages at the Sites. The amount of credit is based on the Trustees’ estimate of the cost of undertaking the work themselves. The agreement specifies that the work only partially provides compensation for natural resource damage liability at the Sites, and reserves the Trustees’ rights for further recovery against any PRP, including BASF. The proposed location for the restoration work is at the intersection of Clay Street and Passaic Avenue in East Newark, New Jersey. The project includes five acres adjacent to the Passaic River, and includes the transformation of a

former manufacturing site of BASF and an adjacent property, into restored naturalized flora and fauna with a hydrological connection to the River. BASF will undertake the design and construction, provide funding for future operation and maintenance, reimburse Trustee oversight costs, and impose a conservation easement and restriction on the property to protect against future development. The work also includes creation of public access to the River.

The publication of this notice opens a period for public comment on the proposed agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In Re BASF and Trustees Interim Settlement Agreement*, D.J. Ref. No. 90-11-3-07683/14. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the proposed agreement may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed agreement upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree and Non-Judicial Settlement Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Please enclose a check or money order for \$9.50, without appendices (25 cents per page reproduction cost), or for \$21.25, with appendices, payable to the United States Treasury.

Susan M. Akers,

Assistant Chief,

Environmental Enforcement Section,

Environment & Natural Resources Division.

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